

soms, and over this a beautiful veil of Hessian lace, was worn. The bridesmaids of train bearers were also attired in white. The given dower was a dress of violet colored velvet, with train to correspond.

THE MADISONIAN.

THE NEW JERSEY CONTESTED ELECTION. TO THE AMERICAN PEOPLE.

We desire to call the attention of the whole country to the statement herewith exhibited, as a report prepared and presented to the House of Representatives, by the minority of the Committee on Elections, to which was referred the contested election from the State of New Jersey; and we especially desire to call their attention to the novel, extraordinary and appalling circumstances, which have driven us to the necessity of thus appealing to our fellow citizens, from one end of the Union to the other; and we do it with the confident assurance, that they will give to the subject that careful and unprejudiced consideration which its importance demands, and their own future safety and interests, imperiously require; that they will unite with us in the belief, which in the honest sincerity of our hearts we entertain, that the Government under which we live, must soon become worse than a Turkish despotism, unless the People, in the majesty of their strength, shall arise and rebuke the perpetrators of the outrage which has been committed on the Constitution of the United States, the laws of one of the sovereign States of this Union, and the rights of the great body of the People themselves.

We will not enter into a minute detail of the means by which five of the Representatives of the State of New Jersey, furnishing the highest evidence known to the laws of that State, that they had been regularly and constitutionally elected, were driven from their seats, previous to any investigation whatever, and denied all right to participate in the organization and proceedings of the House, and much less will we undertake here, to pronounce upon the motives which led to this unparalleled proceeding.

We wish to take up this subject at another point, and let the country know what are the circumstances under which five other gentlemen from the State of New Jersey have been voted into seats in the House of Representatives, who have presented no return, no credential, no commission: and this done when the members holding the commissions of the Governor of that State, under the Seal of that Commonwealth, were at home by leave of the committee, taking depositions to prove—that they had at all times avowed they could prove—that they had received a majority of the lawful votes given at the polls.

The proceedings of the committee having charge of this subject, will be seen by reference to the report below, up to the time that the report of the majority of the committee was presented, and we now proceed to give a statement of what has since transpired.

But it must be remarked in advance that the Committee, having determined that if an investigation was to be prosecuted behind the commissions of the Governor, every principle of equity and fairness required that there should be a thorough search into the legality of the votes given for each party, and finding that there was no sufficient testimony before them by which it could be ascertained for whom a majority of the qualified voters of New Jersey had cast their votes, such time was granted as the parties themselves deemed requisite to enable them to take such testimony as they might think advisable to establish their respective claims, and that accordingly the parties severally left Washington for the State of New Jersey, where they now are engaged in the prosecution of this work.

During their absence, and shortly after their departure from the city, (no complaint and no application coming from them to the House,) the Chairman of the Committee submitted a proposition to have the documents relating to the contested seats printed for the use of the Committee. This furnished a pretext for the introduction of another proposition, that the Committee should be instructed to report forthwith which of the parties had received a majority of all the votes given at the election. After long debate, this was so modified as to require them to report upon the lawful votes, which expressly, as a matter of course, excluded all unlawful votes.

The subject went to the committee with a precipitation which we deem in a high degree exceptional. The majority of the committee adopted a resolution directing all the votes given to be reported as lawful, under a most extraordinary mental delusion that the instructions required it, because the committee were required to report forthwith. All efforts to have the testimony then before them examined were successfully resisted—reasonable time to the minority to report these and other facts to the House, denied. The report was prepared, presented and received, without delay, the title to which is well adapted to create the impression that the votes reported were all lawful votes, while the body of the report itself (which few comparatively of those who see the title will read) labors to excuse the committee for not ascertaining whether the votes were lawful or unlawful—a member of the minority of the committee attempted to explain the facts to the House—the Speaker decided that he was entitled to the floor—the majority of the House overruled the decision of the Chair, and refused him the privilege of speaking—the previous question demanded, all debate stifled—in the mean time a counter-report is prepared and offered to the House—they refused to receive it, and proceeded at once, wholly ignorant of what the testimony established, with a madness and blindness belonging to desperation only, to vote by the entire strength of their party, that the non-com-

missioned members had received a majority of lawful votes, and were, therefore, duly elected, and entitled to occupy their seats as the representatives of the State of New Jersey; and while the public funds are to be freely used for the distribution of the report of the five administration members of the committee, private means are to be resorted to, to distribute the report of the four minority members.

It is a circumstance, not the least remarkable in this extraordinary case, that the individual members of the majority, refused to recognize, or adopt the reasoning of the report, but were entirely satisfied with the conclusions drawn from it, while the author of the report, was equally well satisfied with his own reasoning, but could not adopt the conclusions, as evinced by his refusal to vote for the resolution based upon it, though present at the time.

For every fact here stated, we pledge ourselves to produce the proof whenever called on, either before the House or the country; they are facts on record, to be found on the journals of the committee and of the House.

And now, we ask by whom these five gentlemen have been elected? By the people of New Jersey, or by the friends of the administration in Congress? And have we said too much in characterizing this proceeding as novel, extraordinary, and appalling? Have we done more or less, than our duty as citizens of this republic, and as Representatives of the people, in thus calling your attention, emphatically, to this subject; in warning you of your danger, and in asserting the necessity of an immediate interposition of the majesty of the people, at the ballot boxes, to correct such monstrous abuses in future.

It has been said, and was generally understood, that the party in power, had, in secret caucus, resolved on the necessity of admitting the administration claimants, to carry through some of the odious schemes of the present administration; still we hoped that before they struck the final blow, they might be induced to listen to reason and to justice.—We appealed, but we appealed in vain—their resolution was as determined as it was unjust; they voted, and succeeded, and that by a boasted majority of thirty.

How was that majority obtained? Only, because some of the members regarding the outrage as highly gross and violent, refused to vote, or contribute to the formation of a quorum, for the adoption of a report and resolution not founded, as we all conceived, on the testimony of the case, and not warranted or justified by any consideration whatever.

A noble subject for boasting, truly. Let them make the most of it. It is matter of pride to us, that we, at least, resisted it, and resisted to the last.

We feel that we have discharged our duty; if you are too indifferent to your own liberties, to discharge yours, be it so—the consequences must fall partially on yourselves, but mainly on your posterity; but as citizens of this Republic, we tell you we are mournfully apprehensive for the future, and that you may not think we are too grave and too solemn, on this vitally important question, we beg leave respectfully to invite your attention to proceedings in several of the State Legislatures, particularly those of New Jersey, Massachusetts, New York, and Virginia, and to the Special Message of the Executive of the last mentioned Commonwealth, and if all this does not arouse you to the importance of this subject, all further effort on our part will be vain.

But we will not permit ourselves to indulge in any apprehensions—we are not yet old enough—we have not yet come to that pass when those who are clothed with power for the protection of our liberties, can be sustained in such an encroachment on the rights of the people, either for the purpose of propitiating Executive favor on the one hand, or of perpetuating political power on the other.

We respectfully ask that our report, which those who should have acted upon it, have refused to receive (the first instance of the kind as we believe, that has occurred in the government,) may meet with that calm, temperate and unprejudiced deliberation to which it is entitled from the importance of the question involved.

MILLARD FILLMORE,
JNO. M. BOYD,
GEO. W. CRABB,
TRUMAN SMITH.

Washington, March 12, 1840

THE SUPPRESSED REPORT
Of the Minority of the Committee on Elections on the New Jersey case; presented to the House of Representatives of the Congress of the U. S., March 10, 1840—and contrary to all precedent, excluded from the House, (its reception and reading being refused, with the previous question pending, and all debate cut off,) by a party vote in the negative.

The undersigned, being a minority of the Committee on Elections, to which was referred the New Jersey case, not concurring in the reasoning and conclusions of the report presented to the House by the Chairman of that Committee, in justice to themselves, and (what is of still higher importance) in justice to the State of New Jersey, and her representatives, beg leave to present to the consideration of the House the following Report:

We regret very much that the report above referred to, should have been presented to the House so soon after it was adopted in Committee, as to render it wholly impracticable for us to submit to the House at the same time our own views of the interesting and important subject before the Committee, in the form of a counter-report; and we also regret that our time and attention have been so much engrossed by the proceedings of the House, on this subject, since the principal report was submitted by the Chairman, that we are now necessarily limited to such a statement of material facts connected with the question before the House, as is indispensable to a true understanding of its merits.

When the subject was first referred to the Committee, the parties to the contest were severally notified that the Committee was then ready to receive a statement of such facts in writing as they proposed

to prove, together with any legal points they might think proper to submit to sustain their respective claims.

In pursuance of this suggestion, they made to the Committee written communications, in which their views of the controversy, and the grounds of their respective claims were fully developed; and which were in substance as follows: The commissioned members claimed the vacant seats under and by virtue of the commissions issued by the Executive of New Jersey; and insisted that if the Committee should determine to go back to those commissions, and to inquire into the merits of the election, they had a majority of the lawful votes polled, and also a majority of the votes lawfully certified to the Governor.

The non-commissioned claimants admitted the authenticity of the commissions, but alleged that they received the greatest number of votes polled; that the Governor and Privy Council, unlawfully refused to count the votes from the townships of Millville and South Amboy, for the reason that they were not included in the certificates of the Clerk of the counties of Middlesex and Cumberland; and that, had the votes of the townships been counted, the result would have been a majority in their favor. That the commissions being thus erroneously and unlawfully issued, were void.

The commissioned members, alleged numerous frauds and illegalities in the election; some of which they insisted ought to set aside the polls; and others to invalidate the votes; such as excluding duly elected persons from officiating as judges of election; the determination of electing officers to receive alien votes, and, in fact, receiving such votes, knowing that they were illegal; disregarding all challenges of illegal votes, and permitting persons, attempting to challenge, to be driven away by threats and violence; and fraudulently abstracting votes given for them; and substituting others for their opponents; and rejecting legal votes offered for them; and admitting illegal votes on the other side; and they also submitted to the committee a list showing about 230 illegal votes given and counted for the non-commissioned claimants, and three or four legal votes offered for the commissioned members and rejected.

They also alleged that they expected to prove an extensive conspiracy among the friends of the opposite side of claimants, to perpetrate these frauds and obtain these illegal votes; that they had taken some evidence to establish said fact, but had been prevented from completing the proofs, because there was no law regulating the mode in which the same should be obtained, or giving compulsory process to compel the attendance of witnesses; and also because the friends of the non-commissioned claimants had persuaded witnesses not to attend for examination; and had prevented officers from taking depositions for intimidation and threats of public prosecution for so doing; and they asked further time, and the authority and direction of the committee to enable them to compel the taking of their testimony.

The non-commissioned claimants denied all knowledge of the alleged frauds and illegal votes; but stated that they had heard of some alien votes having been given at Millville, and admitted the fact; and also presumed that alien votes were given in other parts of the State; but believed that there were as many on the one side as on the other.

These statements were not completed and laid before the committee until the 23d day of January, and it was obvious from an examination of them, and of the resolution of the House referring the matter, that the committee must pursue one of two courses—that they must either make a preliminary report, awarding the vacant seats to one set of claimants, until the whole subject could be investigated; and the final right determined; or, proceed to a full and thorough investigation of the subject, and decide upon the merits of the whole case at once.

Eight members of the Committee out of nine, were in favor of submitting a preliminary report, by which the vacant seats would have been filled; but they differed as to the basis on which that report should be founded. We entertained the opinion that it should be based on the legal returns of the only authority recognized by the laws of New Jersey as authorized to grant the return—that being the highest *prima facie* evidence of an election that could be pre-empted—and which it has ever been the practice of Congress, and of all other legislative assemblies, to treat as conclusive in the first instance. And, accordingly, one of our members submitted the following proposition:

“Resolved, That this Committee will now proceed to ascertain and determine who have the returns according to the Constitution of the United States, and the laws of New Jersey, and will authorize them to occupy the contested seats from that State, until the question of ultimate right can be determined.”

Other gentlemen of the Committee, differing with us in opinion, thought that the Executive Commissions should be entirely overlooked; and that it was the duty of the Committee to proceed at once to ascertain which party had received a majority of all votes, good and bad, given at the polls; and were, therefore, entitled to the returns—and submitted amendments to that effect.

This view of the subject we deem utterly fallacious; but time will not permit us to enter into the argument. The consequences resulting from this novel doctrine, are well illustrated by the scenes of disorder and confusion which resulted from its application at the present session—scenes in a high degree, discreditable to the House, and endangering the peace of the country, and which most greatly impair the confidence of all right-thinking people in the perpetuity of our free institutions.

Upon a careful examination of the laws of New Jersey, we ascertained that the Governor and Privy Council were mere ministerial officers, charged with a certain specified duty, plainly set forth, viz: to ascertain and determine which six of the persons voted for, received the greater number of votes, according to the returns made by the clerks of the several Counties of the State. That the individuals who were commissioned by the Governor of New Jersey, as the Representatives of that State, had received the greatest number of votes thus returned according to law, was a fact not disputed or denied.

Finding this difference of opinion, however, to exist in the Committee as to the basis of a report, the mover of the original proposition modified the same, with the view of reaching the sense of the Committee; and merely proposed, in general terms, that a preliminary report should be made, designating the individuals who should occupy the vacant seats, until the question of ultimate right could be determined; thus manifesting a disposition to have the seats filled, as the Committee and the House might determine, according to their sense of justice and propriety. But, from an apprehension, as we presume, that they could not succeed in the untenable ground they had taken, that the report should be made favorable to those who barely obtained a majority of all the votes, legal and illegal, given at the election, the modified resolution was likewise resisted; and a substitute offered, which proposed to inquire who were entitled to be returned as members elect: evidently on the ground of good and bad votes; for when it was proposed to insert an amendment, which would make the case turn on the majority of legal votes, such amendment was strenuously resisted, and carried only by the casting vote of the Chairman. This resolution, as ultimately adopted, was as follows:

“Resolved, That this Committee will now proceed to ascertain which five of the ten individuals claiming the five vacant seats from New Jersey, received a majority of legal votes, and therefore, are duly elected Members of the 26th Congress, from that State, according to the Constitution of the United States, and the laws of New Jersey.”

Thus it will be perceived that the committee came to an early determination to investigate the ballot

boxes, and ascertain who were entitled to the seats on the ground of having received a majority of legal votes, in which decision we acquiesced; and, although our original views were unchanged as to the propriety of the views we had expressed, we determined to make no further effort to procure a result that, in our judgments, every principle of justice demanded.

We then proceeded to the consideration of another resolution offered by one of the gentlemen of the majority, which, as amended and ultimately adopted, is as follows:

Resolved further, That whilst in the opinion of this committee, the certificates of the Governor of New Jersey are *prima facie* evidence that those who hold them are entitled to seats, they are not conclusive evidence as to the ultimate right; and that such certificates, being contested, such right must depend on the majority of legal votes given in conformity with the constitution of the United States and the laws of New Jersey.

On this resolution a division was called for, to wit, on the first branch, as follows:

Resolved further, That whilst in the opinion of this committee, the certificates of the Governor of New Jersey are *prima facie* evidence that those who hold them are entitled to the seats, they are not conclusive evidence as to the ultimate right.

And those who have paid much attention to the progress of this question, both in the House and the country, will perhaps be somewhat amazed to hear that this proposition for which alone we had contended in the House, and the defeat of which had caused a sovereign State in this Union to be deprived of five-sixths of her representation on the floor of Congress, and had excited the public mind in every part of the confederacy, met with the unanimous sanction of the committee.

The resolutions, as adopted, was communicated to all the parties engaged in the contest under the following resolution:

“Resolved, That the foregoing resolutions be communicated to each of the claimants to the vacant seats from the State of New Jersey, and that this committee will hear them at their committee room on the 25th day of January, instant, at ten o'clock in the forenoon, on the subject of the measures which should be adopted to obtain the evidence applicable to inquiry before the committee.”

Accordingly, on the 25th of January, the parties appeared before the committee, and there was a likelihood that after fifteen days of time and labor spent by the committee before they could arrive at any conclusion, we should at once proceed, in pursuance of these resolutions, to ascertain which five of the ten individuals claiming seats had now a majority of legal votes, and were therefore duly elected members of Congress, when very unexpectedly to the undersigned, the chairman of the committee moved a reconsideration of these resolutions, with a view to offer substitutes. They were reconsidered accordingly, again discussed, and laid on the table, and the chairman introduced substitutes which were amended, modified and discussed, and were finally adopted after two days of additional labor, and are as follows:

Resolved, That the credentials of the Governor of New Jersey are *prima facie* evidence that they who hold them are entitled to seats, but, being questioned on the ground that all the votes polled were not counted, this committee will now proceed to inquire and ascertain who of the ten claimants for the five contested seats received the greatest number of votes polled in conformity with the laws of New Jersey, at the late election for Members of Congress in that State.

Resolved, That all votes received by authorized officers acting in conformity with the laws are *prima facie* legal; but if being alleged and offered to be sustained by evidence, that pluralities were obtained by means of illegal votes and frauds perpetrated on the ballot-box, this committee will admit evidence as to the truth of these allegations, and inquire who of the claimants received the greatest number of legal votes in conformity with the Constitution of the United States and the laws of New Jersey, and therefore are entitled to occupy, as members of the 26th Congress, the five contested seats from that State.

Resolved, That the adoption of the above resolutions does not preclude this committee from referring the facts and testimony, with its opinion thereon for the consideration of the House, at any stage of its proceedings that it may deem it expedient to do so.

Resolved, That a copy of the foregoing resolutions be communicated to each of the claimants to the vacant seats from New Jersey, and that they be informed that the committee has reconsidered and indefinitely postponed the resolutions furnished them on the 25th instant, and that this committee will hear them at their committee room on Saturday, the first of February proximo, at ten o'clock in the forenoon, on the subject of the measures which should be adopted to obtain the evidence applicable to the inquiry before the committee.

The parties accordingly met again in the Committee room, and after they were severally heard, the Committee adopted the following resolution:

“Resolved, That we will now take up the testimony which has been referred to this committee in the New Jersey case, with a view of hearing and deciding upon its competency only; leaving its sufficiency to be determined when the testimony is finally closed by order of the Committee; and if, during the investigation of the subject, it shall be desired by either party to furnish additional testimony, that then the parties be allowed such reasonable time as may be determined by the committee, to take such additional testimony, in the manner prescribed by the laws of New Jersey relating to contested elections, unless the parties agree upon some other mode which may be sanctioned by the committee.”

Thus, it will be perceived, that before a paper purporting to be testimony in this case, was opened by the committee, it was resolved to decide upon its competency alone; and it was further resolved, that time should be allowed either party requiring it, to take additional testimony, with a view, as we supposed, of ascertaining the whole truth, touching the merits of the election.

This resolution, the committee adopted, without knowing how it would affect the interests of either party, or which should be the first to ask for time; for it depended on what portion of the testimony might be received, and what rejected on either side.

In pursuance thereof, the Committee proceeded to hear objections and arguments on the competency of the evidence. Most of the testimony on the part of the non-commissioned claimants, consisted of certificates and sworn copies of papers, the affidavits appended to most of them were *ex parte*, and taken without notice. And most of that adduced by the commissioned claimants, besides their commissions, consisted of depositions taken before State officers in New Jersey, upon notice to the opposite party. Numerous objections were taken to the competency of this evidence, but the undersigned felt no embarrassment in respect to any of them, except that which raised an inquiry as to the sufficiency of the notice of taking the depositions; there being no law of Congress or of the State, applicable to this case, directing the mode of taking evidence, the committee experienced great difficulty in finding any rule that would do justice to all concerned. The usage of the House for many years, had sanctioned the practice of receiving depositions, in cases of contested election, taken on reasonable notice; but had not settled what was reasonable notice. The commissioned members indicated a willingness that, inasmuch as they were to return to New Jersey to obtain additional proofs, the committee should reject all testimony in respect to which there was much doubt; to the end that they might relate the evidence, and place the matter beyond dispute.

It is proper to state, that this suggestion, made from motives of prudence, avowedly influenced the action of one of the undersigned, who voted for the exclusion of testimony which he would not have hesitated to receive, if compelled to proceed at once and dispose of the case on its merits. The Chairman seemed disposed to take a liberal view of the subject, and to admit nearly the whole of the evidence on both sides; treating what we deemed objections to competency, as mere objections to the sufficiency of the proofs;—the effect of which was, with the aid of the other four members concurring in the report already submitted, to let in much the most important part of the testimony adduced by the non-commissioned claim-

ants, though taken *ex parte* and without notice. But when the testimony on the other side came under consideration, the same four members voted against its competency, though taken on notice, in some instances at least, ample and abundant; and it so happened that in consequence of the doubts of one of the undersigned, and the influence of a wish which he indulged to have the case cleared of all embarrassment, by re-taking the evidence, much the most important part of the proof offered by the commissioned claimants was rejected, and the testimony before the Committee was left in a very confused, imperfect, and chaotic state, and in such a condition as to render it, in the judgment of the undersigned, in a high degree unjust to make it the basis of the action either in the Committee or the House, for any purpose whatever.

When the Committee had thus disposed of the questions of competency arising on the evidence before it, the commissioned members again renewed their application for further time, to finish taking their testimony; and again verbally stated to the Committee the various difficulties which had prevented the completion of their proofs before the session of Congress. And this statement not being denied by the non-commissioned claimants, the Committee, in consideration of those difficulties, and also in reference to the fact that such of the testimony adduced had been rejected in the manner above stated, deemed the request reasonable, and determined to grant it; and both parties being decidedly of the opinion that the testimony could not be taken before the second Monday of April next, the Committee adopted a preamble and resolution as follows:

Whereas, the people of the State of New Jersey are at present deprived of five-sixths of their Representation in the House of Representatives, and it being highly expedient that the decision of the question between the several claimants to the five contested seats in the House aforesaid, be made as speedily as practicable, consistent with a due investigation and deliberation, and J. B. Averig, William Halsey and others, having made application to the committee, for time to take further evidence, to maintain their right to seats in said House, and the contending parties having alleged that, if the committee go into an investigation of the question of who received the plurality of legal votes, they desire time also to take testimony:

Therefore, Resolved, That the chairman be required to notify the several claimants aforesaid, that this committee will not proceed to a final decision of the question of ultimate right depending before them, until the second Monday in April next, at which time the committee will report, the proofs to be closed, and will not receive any testimony taken by either of the parties after that time, but nothing in this resolution shall prevent the committee at any time before that day from taking up and deciding said case, if the parties shall declare themselves ready with all their testimony.

In justice to the chairman of the committee, it should be stated, that he indicated to the committee an anxious wish that the time allowed for the completion of the proofs, should be abbreviated, with a view of bringing the case, upon its merits, before the House, at an early day as practicable; and three of the undersigned, in deference to the opinions and feelings of the chairman, co-operated with him in an effort to procure a reconsideration of the above resolution; which was defeated by the votes of the other members of the committee.

Nothing now remained to be done, but to carry out the original plan as exhibited in said resolutions; and accordingly the following resolution was offered by one of the undersigned, and adopted by the committee.

“Resolved, That the parties to the contested election for the State of New Jersey, be, and they are hereby, notified, to take the testimony of such witnesses as either of them may desire to examine, by depositions in conformity with the laws of that State in force at the time of taking any such testimony, on the subject of contested elections in similar cases; provided, that the parties may by any agreement under their hands, regulate the mode of giving notice, and other matters of form at their discretion.”

Soon after the adoption of these resolutions, the commissioned members left the city for the State of New Jersey, to finish taking their evidence, where they still remain. We did not anticipate, nor had we an intimation, from any quarter, that further proceedings in the case were contemplated, either in the committee or the House, until the expiration of the time allowed the parties to complete their evidence; nor are we willing to believe that the House would have adopted the resolution of the 28th of February, if it had known the situation of the case before the committee, or anticipated the construction which the committee would put on the resolution.

Nothing is more abhorrent to a well regulated mind, than the appearance of deception or treachery in the administration of justice. We will not, for the honor of our country, believe that the highest deliberative assembly in the land, acting as a judicial tribunal, and deciding, not only upon the rights of individuals, but also upon the rights of one of the sovereign States of the Union, will, for a moment, after these parties have been sent away in confident security that they were to have time to take their evidence, entertain the idea of taking up the case in their absence, and deciding it without a hearing, and with the proofs on one side wholly incomplete. Such a procedure would be an example of injustice and perfidy so flagrant, and establish a precedent so pernicious, that it would hardly be respectful to this honorable body to give it a further examination.

At this stage of the proceedings (the parties having returned to New Jersey to complete their testimony,) the subject was again brought before the House, and a strenuous effort made to instruct the committee to report forthwith who had received a majority of the votes given at the polls; and, on a proposition to amend the resolution by inserting the word “lawful,” so as to require the committee to report the lawful votes only, a long, earnest, and, to some extent, an angry debate arose; and by the casting vote of the Speaker, the amendment was adopted; and the resolution was sent to the committee in the following form:

“Resolved, That the committee of elections be authorized to report to this House such papers and such of their proceedings as they may desire to have printed by order of the House, and that they be instructed to report forthwith, which five of the ten individuals, claiming seats from the State of New Jersey, received the greatest number of lawful votes from the whole State for representatives in Congress of the United States, at the election of 1838, in said State, with all the evidence of the fact in their possession; provided, that nothing in this resolution shall be construed as to prevent or delay the action of said committee in taking testimony and deciding the said case upon the merits of the election.”

A majority of the Committee, paying no regard to absolute instructions of the House, to report the lawful votes, decided that the introduction of the word “lawful” did not affect the original meaning of the proposition, and that the resistance it had encountered in the House from four of their own members had no object in it but a perverse and obstinate determination on their part to oppose a perfectly harmless amendment; and they proceeded at once, without deigning to go into an examination of the testimony before them, to make a report on the whole number of votes given at the polls, lawful and unlawful, the men and the boys, the aliens and the citizens, without discrimination, and without stopping to inquire whether the elections were held in the manner prescribed by law, when they knew that allegations had been made and partially established that all these matters would be proven, and many of them, perhaps enough, already proven by the testimony then before them, to change the result, at least in part, if they would have opened and examined it. But this the Committee conclude, and labor through out their report to prove, they were not authorized to do, because they were directed to report forthwith on the lawful votes, and that the effect of that omnipotent and “pungent word forthwith,” neutralized and nullified the word lawful, and rendered it perfectly nugatory; and that being required to report forthwith the lawful votes, they were of necessity com-

plied to regard all unlawful votes as lawful votes; and that that was what the House intended when it voted 97 to 96 they determined to insert it.

Why, then, did these gentlemen themselves make its introduction? It was precisely what they desired! It was exactly what they had struggled for in committee, and why did they not put the same construction on their own act in committee, which they inserted the word lawful under the same circumstances? Why did they not then proceed to ascertain, whether received a majority of lawful votes as well as legal votes, and report that fact to the House? Only, we suppose, because that “pungent word forthwith” was omitted.

This branch of the report, we confess, we feel much difficulty in preparing, from an indisposition to say any thing that might bear the appearance of a want of a proper preference for the opinions of our colleagues; and yet, we have so little respect for the reasoning contained in that report, that we scarcely know how to characterize or treat it. We do not mean to impeach their motives or their intelligence, but, at the same time, we are impelled to speak of it as the most extraordinary document that has ever come under our observation. Let us compare the resolution of the House with the Report of the Committee, and ascertain whether the instructions therein contained have been obeyed or disregarded.

By that resolution the Committee are instructed to report forthwith, which five of the ten individuals claiming seats from the State of New Jersey, received the greatest number of lawful votes, from the whole State, for Representatives in the Congress of the United States, at the election of 1838 in said State, with all the evidence of that fact in their possession: “Provided, that nothing herein contained shall be construed as to prevent or delay the action of the Committee in taking testimony, or deciding the said case upon the merits of the election.” How has this position and absolute instruction been fulfilled? Was there a member of the body that did not feel and believe, on the introduction of the word lawful, that was so strenuously resisted, that the whole objects of the mover of the original resolution and his friends, had been defeated? Was there a member of the House who anticipated that within a few days from that time, without the examination of testimony, the Committee would report that all the votes given at the election, lawful votes, because they were enjoined to report forthwith, when they were expressly required to report only those who received the greatest number of lawful votes, only from the whole State; and if there was testimony before the Committee to enable them to report forthwith, what they were required to report? Why did they not state that fact to the House? Why did they not report, that the testimony is incomplete, and the parties to the contest are now, by order of the Committee, at home, taking evidence to establish what you have instructed us to report? Why did they not give to that pungent word “forthwith,” its plain, common sense meaning, as soon as practicable, without unnecessary delay? But, instead of that, it is made to control the whole resolution. What says the report?

“When the proposition to instruct was originally introduced as an amendment to the application with which the committee had come before the House, its intent was clear that a report should be immediately made of the names of those who had received the greatest number of votes at the last Congressional election in New Jersey. If any thing more was wanted to explain the meaning of this proposition, it is to be found in the *proviso* which was added, and which clearly indicated that the action which the House was about to demand, did not contemplate an interference with the course adopted by the committee for the “taking of testimony, and deciding the case upon the merits of the election.”

And, yet, when the resolution is so altered as to require the committee to report upon the lawful votes only, it means precisely what was intended before the amendment was adopted. Such a course of reasoning, we take for granted, cannot be satisfactory, either to the House or the country.

The report proceeds to say: “At the same time, the committee cannot entirely overlook (mark the word) entirely overlooking the word lawful, or strike that word from the resolution, which was inserted upon a contest so close, as to require a casting vote for its decision;” which casting vote may as well be ascribed to the chairman of the committee, as to the Speaker of the House, for one vote counted as much as the other; and one would respectfully inquire whether the Hon. Chairman, himself, who drafted that report, attached no importance to the insertion of the word lawful, at the time he voted for it.

The report goes on.

“There is but one other basis left, and that is the *prima facie* case upon the returns of the local officers of the several polls; and the nature of the controversy taken into consideration, it can scarcely be doubted that to this basis the resolution looked.”

But, the very subject of the controversy before the House, was, whether the resolution should look to that basis or not—whether it should look to the whole vote, or the lawful votes only; and it had been decided by the casting vote referred to, that it should look to the lawful vote only; and not to the whole vote given, as originally proposed by the resolution, and while the committee “cannot entirely overlook the word lawful,” or strike it from the resolution, they find no difficulty in disregarding its plain import and meaning, and they report the very matter they were instructed, by the House, not to report, and this not from a desire to make such a report, (because five members of that committee had constantly refused to make a report based upon any such principle,) but in strict obedience to the instructions of the House. But, in addition to this “pungent word, forthwith,” it is said “the proviso qualified the meaning of the word lawful. Now, the construction that we give to the proviso, is, that it qualifies this word, ‘forthwith,’ and was intended as a qualification of that word, when first introduced.—That is to say, that whilst you are required to report, forthwith, which five of these ten gentlemen received the greatest number of votes from the whole State, nothing herein contained shall be construed as to prevent, or delay the action of the committee in taking testimony, or deciding said case upon the merits of the election. It appears to us that there can be but one opinion on this subject, that the proviso was intended as a qualification to the ‘forthwith’ report to be made; and it is totally incomprehensible to us, how the minds of the committee could have been drawn into the strange error, that the proviso was intended to qualify what, at the time it was written, constituted no part of the resolution.”

The subsequent introduction of the word lawful, as we conceive, not only does, but was intended to qualify, control and explain, the whole resolution; it was an explanation of itself. But the committee, have determined that the word, forthwith, and the proviso, which were intended to be explained, by the word lawful, themselves, explain the explanation, or, in other words, nullifies and renders altogether nugatory, this most important and all controlling explanatory amendment.

There is one view of this subject that is truly singular, however, and that is, that in the early part of the session, when the same facts were admitted before the House that are now reported by the committee, there was not a member of this body prepared to give the seats to those who received a majority of all the votes given, including the bad with the good. Why was the case ever referred to the committee? The House having refused to recognize those persons as members who have the legal commissions, and not venturing at that time to recognize those who had no returns, and only claimed that they had received a majority of legal and illegal votes, the whole matter was referred to a committee for investigation under such circumstances as to indicate